

PART 870—SPECIAL PROCUREMENT CONTROLS

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:::870.000 Scope of part.

This part establishes certain controls over the procurement of special and specific items of supplies and equipment.:::

SUBPART 870.1 - CONTROLS

:::870.101 Equipment not in production that is technical in nature and complex in design.

(a) Except as provided in this 870.101, technical equipment of complex design that is not in commercial production or which, if in production must be modified to meet a specific performance specification, will not be purchased in quantity. The initial purchase will be limited to that quantity determined by the department head or staff office director concerned to be necessary to properly test and evaluate the equipment. This determination will be in writing; the original will be filed in the contract file and a copy forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (92). The authority to make this determination will not be redelegated. Contracts covering the initial procurement will reserve to the contracting officer the right to approve any subcontractor the prime contractor proposes to use.

(b) During the evaluation period, the contracting officer will be furnished the product evaluation reports required by 846.7101 and 846.7102. The contracting officer will, in addition thereto, be furnished such other information as may be necessary to enable him/her to properly administer the contract and to protect the rights of the VA. The Deputy Assistant Secretary for Acquisition and Materiel Management (92), will be furnished copies of all reports furnished the contracting officer and will also be furnished a report of the actions taken by the contracting officer to correct any malfunction of the equipment. A copy of this latter report will also be made a part of the contract file.

(c) Equipment of this nature will be approved for quantity purchase by the department head or staff office director, only after it has been thoroughly tested at one or more Department of Veterans Affairs installations, or by another Federal agency or nationally recognized testing laboratory. When tests are not conducted by the Department of Veterans Affairs, the testing agency's reports will be reviewed and evaluated by the Office of Acquisition and Materiel Management prior to approval of a quantity purchase. When approved for purchase, the procurement

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will, if possible, be assigned to the contracting officer who made the initial purchase. If this is not feasible, the contracting officer to whom the procurement is assigned will secure from the original contracting officer all pertinent information necessary to execute the contract.:::

:::870.102 Carpeting.

(a) Purchases of carpeting for installation in all portions of health care facilities, except detached housekeeping quarters, will incorporate the fire safety requirements contained in appendix 5A of VA manual MP-3, part III. Those requirements are included for some of the items in section D and none of the items in section A of the Federal Supply Schedule, Group 72. Where a desired item is not shown as meeting the VA requirements, it may be purchased only if contact with the manufacturer indicates that the requirements will be met.

(b) Purchase orders placed against Federal Supply Schedules will provide for inspection at origin by GSA Quality Control personnel. To arrange for that inspection, two legible copies of the purchase order will be forwarded to the GSA Quality Control Division of the GSA region in which the contractor's plant is located.:::

:::870.104 Procurement of training.

(a) SF 182, Request, Authorization, Agreement and Certification of Training will be used as the procurement document for training through a non-Government facility. The name, date and signature of the contracting officer will be inserted in the space on SF 182 designated "Agency Use Only."

(b) An addendum to the procurement form will be provided the contractor or the appropriate clauses will be incorporated by reference. This addendum, if used, will be referenced in the "Agency Use Only" space. Incorporations by reference will also be accomplished in that space. The addendum or incorporation by reference will include the following clauses:

- (1) Disputes (FAR 52.133-1).
- (2) Officials Not To Benefit (FAR 52.203-1).
- (3) Covenant Against Contingent Fees (FAR 52.203-5).

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(4) (For contracts exceeding \$2,500). Affirmative Action for Handicapped Workers (FAR 52.222-36).

(5) (As applicable.) Federal, State and Local Taxes (FAR 52.229-3 or 52.229-4).

(6) Requirements of section 410.504, Title 5, Code of Federal Regulations (see par. 870.104(e)).:::

:::870.105 Animal model study subjects.

(a) Dogs, cats and other animals, as defined in the Animal Welfare Act, as amended, 7 U.S.C. 2132(g), 9 CFR 1.1(n), purchased single or in any number which are used as model subjects for any purpose in VA biomedical programs of research, technical development and training must be procured from legal sources as defined in the Animal Welfare Act, as amended 7 U.S.C. 2133, 2137, 2138 and 2142, 9 CFR, chapter 1, part 1-4.

(b) The facility Chief Veterinary Medical Officer, or designee, or the facility Consultant Veterinary Medical Officer is responsible for identifying tattooed animals. Any tattoo identified on newly received animals must be checked with the Chief Staff Veterinarian, Office of the Animal Care Staff, Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, telephone (301) 436-7833, to ensure compliance with the Act.:::

:::870.106 Protective items.

(a) Available appropriations can be used for the purchase and maintenance of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. This is authorized by section 7903, title 5, United States Code. Special items (of wearing apparel) required for the protection of an individuals person in the performance of official duties, as distinguished from furnishings for the personal convenience or comfort of an employee, are authorized for procurement under this 870.106.

(b) The cost of eye examination and prescription incident to acquiring safety glasses for employee protection may not be paid for from Government funds, except as provided in Decision of the Comptroller General B-151243, dated May 8, 1963, 42 Comp. Gen. 626.:::

:::870.107 Special equipment for physically handicapped employees.

(a) Physically handicapped employees who require special equipment, such as hearing aids, prosthetic appliances, etc., to qualify themselves to perform their official duties must furnish such equipment at their own expense. Purchase of such equipment from public funds is not authorized.

(b) Equipment such as, but not limited to, telephone amplifying devices, typewriters with special keyboards, etc., designed to assist physically handicapped employees in the performance of their duties, is not considered to be a personal obligation of the employee. Special equipment of this nature may be purchased with public funds when:

(1) The Government, rather than the employee, receives the principal benefit resulting from the use of the equipment, and

(2) The equipment is used by the employee in connection with regular duties and is not:

(i) For emergency or infrequent use;

(ii) Intended for the exclusive use of the individual employee, but may also be used by other employees; and

(3) The approval of the appropriate Central Office department head or staff office director for whom the individual works has been secured.

(4) The General Counsel (02) has reviewed and approved the purchase.:::

:::870.108 Acquisition of equipment.:::

:::870.108-1 Rental in lieu of purchase.

(a) At the time of rental arrangements are completed, contracting officers will establish a control which will insure that equipment that has served its purpose is promptly returned to the contractor or that rental charges are discontinued.

(b) Equipment designated as controlled by Central Office program officials will not be rented without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management and the department head or staff office director involved.

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(c) Requests to rent equipment, other than that indicated in paragraph (b) of this section, will be fully justified and approved by the station Director prior to taking any contractual action. In Central Office, requests will be approved by the department head or staff office director, or designee.:::

:::870.108-2 Lease-purchase agreements.

(a) When there is reason to believe that neither rental nor purchase would be the most economical method of acquiring a specific piece of equipment, a request to enter into a lease-purchase agreement will be submitted through channels, to the appropriate department head or staff office director (except as specified in paragraph (d) of this section). The request will give specific reasons why such an agreement will be advantageous to the VA. The following factors will be considered:

- (1) Minimum estimated useful life of the equipment,
- (2) Maximum estimated period of usage,
- (3) Total investment required as opposed to outright purchase, and
- (4) Degree of obsolescence anticipated over the period of expected usage. Anticipated obsolescence due to technological improvements should relate to the ability of the equipment to continue to serve its intended purpose rather than to differences in models.

(b) Lease-purchase agreements fall into two general categories:

(1) A lease covering a 3-year period during which the rental charges will pay off the purchase price, plus certain charges, as follows:

- 1st year - 50 percent
- 2nd year - 33 percent
- 3rd year - 17 percent

Purchase may be made at any time during the life of the agreement by paying the difference between the accrued rental payments and the agreed to purchase price. This type of lease-purchase agreement is cancelable at any time, and

(2) A lease covering an extended period of time at a constant rate

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of payment. A portion of the rental payments may be applied toward the cost of purchase. This type lease may be canceled at any time subject, however, to a cancellation charge.

(c) When soliciting offers, contracting officers will consider, in addition to other applicable clauses and conditions, the following:

(1) Solicitations will specify the period of time over which the lease will be in effect and whether the lease will be cancelable by the Government during that period.

(2) Offerors will be asked to indicate in their proposals the price at which they would be willing to sell the equipment should the Government elect to purchase at a later date, prior to expiration of the lease-purchase agreement. They will be requested to specify the latest date such an option may be exercised by the Government and how much of the lease cost already paid by the Government may be applied against the purchase price quoted.

(3) The basis for award must be stated and should be designed to acquire the use of the equipment for the maximum period of use at the lowest total cost.

(d) Except for the Department of Veterans Benefits and Department of Memorial Affairs, the approval of the appropriate department head or staff office director is not required when the agreement is to be entered into against an existing contract. Requests to enter into such agreements, for use of the Department of Veterans Benefits and Department of Memorial Affairs, will continue to be submitted for approval as specified in paragraph (a) of this section.:::

:::870.108-3 Consignment agreements.

(a) Consignment agreement is defined as an agreement for a specified period of time under which a vendor provides an item to the Department of Veterans Affairs, reimbursement for which is made only if and when use of the item is made by the Department of Veteran Affairs. Unused items are returned to the vendor at the end of the effective period of the agreement without reimbursement or other expense to the Government.

(b) Procurement by consignment agreement may be considered in those instances where the requirement for an item is immediate and it is not possible to predetermine which of several types or models are required

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(i.e., intraocular lenses, surgically implanted prostheses, etc.) and having each type or model in house on a consignment basis will assure instant availability to the user.

(c) Acquisition by consignment agreement will be made only when this method is determined to be in the best interest of the Department of Veterans Affairs. Each determination will be in writing, signed by the head of the contracting activity, and made a part of the contract file.

(d) Items designated as controlled by Central Office program officials will not be obtained by consignment agreement without prior written approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (92).

(e) Requests to obtain items, other than those indicated in paragraph (d) of this section, by consignment agreement will be fully justified and approved by the facility Director prior to taking any contractual action.

(f) For the purpose of obtaining the approvals required by paragraphs (d) and (e) of this section, initial requests to establish consignment agreements will be routed to the Chief, Acquisition and Materiel Management Service, who will forward the request, together with his/her recommendations, to the appropriate approving official.

(g) When soliciting offers, contracting officers will consider, in addition to other applicable clauses and conditions, the following:

(1) Solicitations will specify the period of time over which the consignment agreement will be in effect and whether the agreement will be cancelable by the Government during that period.

(2) Offerors will be required to specify the price at which the item(s) will be sold to the Government should the item(s) be required for use by the Government at any time during the effective period of the agreement.

(3) Solicitations will specify that the Government assumes no liability for any item(s) assigned to the Department of Veterans Affairs on a consignment basis until such time as a requirement for the item exists and a delivery order is placed against the agreement.

(4) In addition to the requirements of this section, consignment agreements will be established utilizing the same process as any

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other indefinite quantity contract.

(h) For each such agreement, a jacket accountability file will be established and maintained by the Chief, Acquisition and Materiel Management Service, showing all transactions and the total value of property on consignment at all times. As a minimum, the accountability file will reflect:

- (1) Date of receipt of property,
- (2) Ownership of property,
- (3) Description of property,
- (4) Quantity,
- (5) Value of property,
- (6) Agreement number,
- (7) Record of orders placed for property used during agreement period, and
- (8) Acknowledgment of receipt of unused property returned to owner.

(i) Purchase requests will be initiated and forwarded to Acquisition and Materiel Management Service within 1 administrative workday of actual use of property consigned to the Department of Veterans Affairs. Purchase requests not received in Acquisition and Materiel Management Service within this time frame will be processed in accordance with 801.603-72.:::

:::870.109 Controlled substances.

(a) No orders may be placed for items subject to the Controlled Substances Act of 1970, as amended, 21 U.S.C. 801, et seq., unless the bidders Drug Enforcement Administration (DEA) Registration and Reclassification are provided. Regulations of the DEA (21 CFR Part 1300 to end) have been distributed by Department of Veterans Affairs Central Office Pharmacy Service to all medical centers, outpatient clinics, depots and the Marketing Center. Registration (and re-registration), purchasing and distribution of controlled substances will be accomplished in accordance with those regulations.

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(1) In consultation with the pharmacist and the Chief of Staff, applications for registration and re registration shall be signed by the supply officer of the servicing organization as the registrant, and the head of the serviced activity will certify to the status and address of the registrant and to the authority of the registrant to acquire, possess, or handle controlled substances for the registered activity.

(2) The Director of each supply depot will sign applications as the registrant and forward them to the Director, Office of Acquisition and Materiel Management (90), who will sign as certifying supervisor.

(b) The Director of each supply depot which will distribute controlled substances, the purchase of which requires the use of DEA order forms, will execute a power of attorney authorizing the Chief of the appropriate Marketing Division to sign such order forms.:::

:::870.110 Television receivers.

Television receivers acquired for use in patient care areas will be equipped with a tamper-proof, ventilated rear panel. A lock and key or not less than eight tamper-proof screws shall be used for this purpose.:::

870.111 Subsistence.

:::870.111-3 Contract clauses.

(a) Bread and bakery products. See 852.270-3.

(b) Shellfish. See 870.270-3.:::

870.111-5 Frozen processed food products.

(a) All frozen, processed food products procured which contain meat, poultry or a significant proportion of eggs, will be processed or prepared in plants operated under the supervision of the U.S. Department of Agriculture (USDA). The product will be inspected and approved in accordance with the regulations of the USDA governing meat, poultry or egg inspection. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed

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according to the order of their predominance.

(b) All frozen, processed food products procured which contain fish or fish products will be processed or prepared in plants operated under the supervision of the U.S. Department of Commerce (USDC). The products listed in USDC publication titled, "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, USDC. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal, affixed to a container, indicating compliance with USDC regulations will be accepted as evidence of compliance. In lieu thereof, the shipment may be lot inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(c) Producers of frozen bakery products which are shipped in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, it must be verified that the product, in fact was shipped interstate or that the producer ships products to other purchasers interstate. In addition, the product must bear a label complying with the Act which requires that all ingredients be listed according to the order of their predominance.

870.112 Telecommunications equipment.

(a) Solicitations, including those for construction, based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in VA manual MP-6, part VIII,¹ will include the clause required by 852.211-74.

¹Available at any Department of Veterans Affairs facility.

(b) The descriptive literature to be furnished by the contractor after award, required by the clause in 852.211-74, is to be reviewed and approved by the Telecommunications Support Service prior to delivery and/or

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installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it together with a copy of the contract, the formal specification, or the detailed purchase description to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team.

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description are subject to the following:

(1) Prior to award, contracting officers will forward to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors prior to receipt of Central Office reaction.

(3) Allowance of at least 30 calendar days for acceptance will be specified in the solicitation in order to allow sufficient time for the review required by this paragraph (c). (See FAR 52.214-16.)

870.113 Paid use of conference facilities.

(a) The rental space for VA-sponsored symposia and training sessions may be unwarranted when other alternatives are available at no expense or reduced expense to the Government. After the geographical location for a conference has been selected, based on minimum overall travel costs for all Government participants and other relevant factors, a request for conference space will be forwarded to the servicing activity. The request for conference space should afford the contracting officer every opportunity to secure rent-free facilities.

(b) The following criteria for the selection of an appropriate facility will apply:

(1) A thorough effort will be made to schedule conferences and training sessions so that the conference facilities of VA installations in the city where the conference is held may be used.

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(2) Where no VA space is available, the General Services Administration will be contacted to determine if there is other Government agency space which may be used.

(3) Efforts will be made to schedule conferences, where Government space is not available, through hotels and motels which offer conference facilities in exchange for a stipulated number of lodging reservations for participants. Surcharges per lodging or increased room rates, to offset the cost of the conference room, shall be considered payment for such space.

(4) In the event none of these is available on the desired dates, consideration will be given to rescheduling the conference to avail the VA of the use of facilities without payment of a fee.

(5) If none of the above is practical, rental conference space will be obtained. Complete documentation of efforts to secure free conference space, as outlined above, will be maintained in the purchase order file. The costs of coffee, refreshments, meals, lodging, tips and other supplies and services not directly related to the presentations within the conference space are not allowable.

(c) The conference coordinator of the requesting organization will continue to be responsible for individual room reservations, including any cancellations.

870.114 Asbestos.

870.114-1 General.

This section applies to the purchase and use of asbestos products and equipment or materials containing asbestos products in the Department of Veterans Affairs.

870.114-2 Background.

Exposure to asbestos is associated with chronic and debilitating lung disease and cancer. To reduce the health hazard related to the exposure to asbestos, the U.S. Environmental Protection Agency and the U.S. Department of Labor (Occupational Safety and Health Administration) have issued specific regulations

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on asbestos. Although these regulations do not call for a complete ban on the use of asbestos, they do impose strict requirements on its use, airborne contamination and disposal.

870.114-3 Approving authority.

Asbestos products and equipment or materials containing asbestos products shall not be specified nor purchased for use in the Department of Veterans Affairs if any suitable substitutes are available. If suitable substitutes are not available, specific authorization to purchase and use asbestos products and equipment or materials specifying asbestos products, must be granted by the Secretary or designee. Requests for authorization will be submitted through the Director, Network Program Support (10NB). The following information will be provided:

- (a) The name of the product, source of supply, and physical form of asbestos as used in the product or equipment;
- (b) A description of use, including purpose, urgency, methodology, qualities, and by whom; and
- (c) Safeguards being employed, with particular emphasis on the identification of the asbestos products, and procedures to be taken to prevent airborne contamination and disposal.

870.114-4 Exempted products containing asbestos.

The Director, Network Program Support (10NB, VA Central Office, is responsible for maintaining a list of products containing asbestos which are exempted by the Secretary or designee from this policy.

870.115 Food service equipment.

- (a) All new food service equipment purchased for Nutrition and Food Service through other than the Defense General Supply Center (DGSC) sources must meet requirements set forth by the National Sanitation Foundation (NSF).
- (b) The contracting officer will accept an affixed NSF label and/or documentation of the certification by NSF from the contractor as evidence that the subject equipment meets sanitation standards issued by the Foundation.

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